

SSB 5211 - H AMD 466

By Representative Reykdal

ADOPTED 04/24/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. Sec. 1. A new section is added to chapter 49.44 RCW
4 to read as follows:

5 (1) An employer may not:

6 (a) Request, require, or otherwise coerce an employee or applicant
7 to disclose login information for the employee's or applicant's
8 personal social networking account;

9 (b) Request, require, or otherwise coerce an employee or applicant
10 to access his or her personal social networking account in the
11 employer's presence in a manner that enables the employer to observe
12 the contents of the account;

13 (c) Compel or coerce an employee or applicant to add a person,
14 including the employer, to the list of contacts associated with the
15 employee's or applicant's personal social networking account;

16 (d) Request, require, or cause an employee or applicant to alter
17 the settings on his or her personal social networking account that
18 affect a third party's ability to view the contents of the account;
19 or

20 (e) Take adverse action against an employee or applicant because
21 the employee or applicant refuses to disclose his or her login
22 information, access his or her personal social networking account in
23 the employer's presence, add a person to the list of contacts
24 associated with his or her personal social networking account, or
25 alter the settings on his or her personal social networking account
26 that affect a third party's ability to view the contents of the
27 account.

1 (2) This section does not apply to an employer's request or
2 requirement that an employee share content from his or her personal
3 social networking account if the following conditions are met:

4 (a) The employer requests or requires the content to make a
5 factual determination in the course of conducting an investigation;

6 (b) The employer undertakes the investigation in response to
7 receipt of information about the employee's activity on his or her
8 personal social networking account;

9 (c) The purpose of the investigation is to: (i) Ensure
10 compliance with applicable laws, regulatory requirements, or
11 prohibitions against work-related employee misconduct; or (ii)
12 investigate an allegation of unauthorized transfer of an employer's
13 proprietary information, confidential information, or financial data
14 to the employee's personal social networking account; and

15 (d) The employer does not request or require the employee to
16 provide his or her login information.

17 (3) This section does not:

18 (a) Apply to a social network, intranet, or other technology
19 platform that is intended primarily to facilitate work-related
20 information exchange, collaboration, or communication by employees or
21 other workers;

22 (b) Prohibit an employer from requesting or requiring an employee
23 to disclose login information for access to: (i) An account or
24 service provided by virtue of the employee's employment relationship
25 with the employer; or (ii) an electronic communications device or
26 online account paid for or supplied by the employer;

27 (c) Prohibit an employer from enforcing existing personnel
28 policies that do not conflict with this section; or

29 (d) Prevent an employer from complying with the requirements of
30 state or federal statutes, rules or regulations, case law, or rules of
31 self-regulatory organizations.

32 (4) If, through the use of an employer-provided electronic
33 communications device or an electronic device or program that monitors
34 an employer's network, an employer inadvertently receives an

1 employee's login information, the employer is not liable for
2 possessing the information but may not use the login information to
3 access the employee's personal social networking account.

4 (5) For the purposes of this section and section 2 of this act:

5 (a) "Adverse action" means: discharging, disciplining, or
6 otherwise penalizing an employee; threatening to discharge,
7 discipline, or otherwise penalize an employee; and failing or refusing
8 to hire an applicant.

9 (b) "Applicant" means an applicant for employment.

10 (c) "Electronic communications device" means a device that uses
11 electronic signals to create, transmit, and receive information,
12 including computers, telephones, personal digital assistants, and
13 other similar devices.

14 (d) "Employer" means any person, firm, corporation, partnership,
15 business trust, legal representative, or other business entity which
16 engages in any business, industry, profession, or other activity in
17 this state and employs one or more employees, and includes the state,
18 any state institution, state agency, political subdivisions of the
19 state, and any municipal corporation or quasi-municipal corporation.
20 "Employer" includes an agent, a representative, or a designee of the
21 employer.

22 (e) "Login information" means a user name and password, a
23 password, or other means of authentication that protects access to a
24 personal social networking account.

25
26 NEW SECTION. **Sec. 2.** A new section is added to chapter 49.44 RCW
27 to read as follows:

28 An employee or applicant aggrieved by a violation of section 1 of
29 this act may bring a civil action in a court of competent
30 jurisdiction. The court may:

31 (1) Award a prevailing employee or applicant injunctive or other
32 equitable relief, actual damages, a penalty in the amount of five
33 hundred dollars, and reasonable attorneys' fees and costs; and

1 (2) Pursuant to RCW 4.84.185, award any prevailing party against
2 whom an action has been brought for a violation of section 1 of this
3 act reasonable expenses and attorneys' fees upon final judgment and
4 written findings by the trial judge that the action was frivolous and
5 advanced without reasonable cause."

6

EFFECT: Strikes the underlying bill and:

- Prohibits an employer from:
 - o Requesting, requiring, or otherwise coercing an employee or applicant to: (1) disclose login information for his or her personal social networking account; or (2) access his or her account in the employer's presence in a manner that enables the employer to observe the contents of the account;
 - o Compelling or coercing an employee or applicant to add a person to the list of contacts associated with the account;
 - o Requesting, requiring, or otherwise causing an employee or applicant to alter the settings on the account that affect a third party's ability to view the contents of the account; or
 - o Taking adverse action against an employee or applicant because he or she refuses to provide login information, access the account in the employer's presence, add a person to his or her contacts, or alter the account settings.
- Provides that the bill does not apply to an employer's request or requirement that an employee share content from his or her personal social networking account if:
 - o The employer does not request or require the employee to provide his or her login information;
 - o The employer requests or requires the content to make a factual determination in the course of an investigation;
 - o The investigation is undertaken in response to receipt of information about the employee's activity on his or her personal social networking account; and
 - o The purpose of the investigation is either: (1) to ensure compliance with laws, regulatory requirements, or prohibitions against work-related employee misconduct; or (2) to investigate an allegation of unauthorized transfer of the employer's proprietary information, confidential information, or financial data.
- Provides that the bill does not:
 - o Apply to a social network, intranet, or other technology platform intended primarily to facilitate work-related information exchange, collaboration, or communication;
 - o Prohibit an employer from requesting or requiring an

- employee to disclose login information for access to an account or service provided by virtue of the employment relationship or to an electronic communications device or online account paid for or supplied by the employer;
- o Prohibit an employer from enforcing existing personnel policies that do not conflict with the bill; or
 - o Prevent an employer from complying with requirements of statutes, rules, case law, or rules of self-regulatory organizations.
- Provides that if, through use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use it to access the employee's account.
 - Permits an aggrieved employee or applicant to bring a civil action. Permits a court to award injunctive relief, a \$500 penalty, actual damages, attorneys' fees, and costs. Permits a court to award attorneys' fees and costs to a prevailing defendant if the action was frivolous.
 - Defines certain terms.

--- END ---